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| 09/829,151   | 04/09/2001 | Alan Young           | 063170.6800         | 8242             |
| 5073 7590 11/30/2009<br>BAKER BOTTS L.L.P.<br>2001 ROSS AVENUE<br>SUITE 600<br>DALLAS, TX 75201-2980 |            |                      |                     |                  |
| EXAMINER   |            |                      |                     |                  |
| NGUYEN, TAND   |            |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
glenda.orrantia@bakerbotts.com

### Office Action Summary

|                    |              |  |
|--------------------|--------------|--|
| Application No.    | Applicant(s) |  |
| 09/829,151         | YOUNG, ALAN  |  |
| Examiner           | Art Unit     |  |
| Tan Dean D. Nguyen | 3689         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9, 10, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Status*

1. Claims 1-7, 9-10 and 12-13 are pending. Claims 8 and 11 have been canceled.

The claim comprise 3 independent groups:

- 1) Method: 1-7, 12-13,
- 2) System: 9, and
- 3) Apparatus: 10.

Claim 1 is as followed:

1. (Previously presented) A method for reporting a value of a key performance indicator comprising:

- a) receiving information identifying a selected key performance indicator to monitor;
- b) identifying at least one business event associated with the selected key performance indicator;
- c) receiving a business event message indicating an occurrence of the business event, the business event message including business data describing the business event;
- d) in response to receiving the business event message, electronically determining the value of the key performance indicator based on the business data; and
- e) displaying the determined value of the key performance indicator via a contextual visualization interface.

9. (Currently Amended) A system for reporting a value of a key performance indicator, comprising:

a) a processor operable to execute a workflow manager operable to:

(i) receive a selection of a key performance indicator;

(ii) identify a business event affecting the value of the key performance indicator;

(iii) receive a business event message indicating an occurrence of the business event, the business event message including business data describing the business event;

(iv) in response to receiving the business event message, determine the value of the key performance indicator based on the business data; and

(v) output the determined value of the key performance indicator; and

(b) a contextual visualization in connection with the workflow manager operable to display the value of the key performance indicator.

Note: for convenience, letters (a)-(b) are added to the beginning of each element.

Independent system claim 9 appears to broadest and will be examined first.

### ***Finding of Facts***

1) the term "interface" is defined as:

Main Entry: **in-ter-face**

Function: *noun*

Date: 1882

**1** : a surface forming a common boundary of two bodies, spaces, or phases <an oil-water interface>

**2 a** : the place at which independent and often unrelated systems meet and act on or communicate with each other <the man-machine interface> **b** : the means by which interaction or communication is achieved at an interface

See *Merriam-webster Online Dictionary*, available at <http://www.merriam-webster.com/dictionary/event> (visited on November, 23, 2009).

### ***Principles of Laws***

2. Independent claim 9 is (appears to be) an apparatus claim. In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See (1) MPEP 2114. (2) *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does, i.e. "device which acts or performs ...". (3) *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. (4) *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "for reporting a value of a key performance indicator" carries no patentable weight.

Note: independent claim 6 is (appears to be) an apparatus claim. In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See (1) MPEP 2114. (2) *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does, i.e. "device which acts or performs ...". (3) *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. (4) *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "for managing plural approval services... service provider" carries no patentable weight.

Also, current claims 9 and 10 only describes the apparatus using functional language, i.e., "**operable to**" and "**operable to**" in claim 9 and "**cooperative**" in claim 10, without tying such descriptions to positive claim language, such as produced when one uses the term "configured" or, even more positively, 35 U.S.C. 112, sixth paragraph language, "means plus function" language. Current claims 9 and 10 do not

use such language, and thus should not be given the same interpretation of the machine claim. To do so would be to dilute the provisions of the statute. The current function language, "a processor **operable to**" in claim 9 and "a processor **cooperative**" in claim 10, is considered as "a processor **capable of**" which means that the processor does not have to have the exact functions or elements but merely being capable of performing (generating or producing) the functions or elements. Also, the term "a contextual visualization" is not an apparatus device or structure but merely an item which could include software components.

As for the limitation "key performance indicator" (KPI) in the first step/element "*receiving **information** identifying a selected KPI to monitor*", they are considered as non-functional descriptive material (NFD) on the data of "... " and is merely "information" or "data", thus having no patentable weight. The mere insertion of "stock price" or "price/unit" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight. Note that the last step is merely "displaying of the data or information", wherein the data or information is about the determined KPI, so this indicates that this is merely data processing system or communication system. There are no steps calling for "using the KPI value" and "shutting the plant" or "selling a stock of the business".

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of

"data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-7, 12-13 (method) rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to an examiner is that a § 101 process must:

(1) be tied to a particular machine or apparatus or

(2) transform underlying subject matter (such as an article or materials) to a different state or thing. See *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

(a) To qualify as a § 101 statutory process, the claim should recite the particular machine or apparatus to which it is tied, for example by identifying the machine or apparatus that accomplishes the method steps, or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.



(b) There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

(c) Here, applicant's method steps fail the first prong of the new test because there is not a sufficient tie to a particular machine or apparatus. In claim 1, there is a step of "electronically determining the value of the key performance indicator" but this does not sufficiently meets the tie test. Also, there is the phrase "via a contextual visualization interface" which is also not a sufficient tie to a particular machine or apparatus. As indicated by the definition of the term "interface" above,

**1** : a surface forming a common boundary of two bodies, spaces, or phases <an oil-water interface>

**2 a** : the place at which independent and often unrelated systems meet and act on or communicate with each other <the man-machine interface> **b** : the means by which interaction or communication is achieved at an interface

There is nothing in this definitions saying that this term "interface" requires or "is tied to a particular machine".

(d) Further, applicant's method steps fail the second prong of the test because the claimed steps do not result in an article being transformed from one state to

another. There is no transformation occurring in the claims for a physical object or substance or data that represents physical objects or substances.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 9, 10, 1-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over (1) JOHNSON ET AL in view of (2a) ORACLE Article of 9/20/1999, hereinafter as "ORACLE" or (2b) PEOPLESOFT Article of July 12, 1999, hereinafter as "PEOPPLESOFT", and/or vice versa.**

As for independent system claim 9, JOHNSON ET AL fairly display a system for reporting information such as proposal, quote, forecast, comprising:

a) a processor operable to (capable of) execute a workflow manager operable to (capable of):

{see Fig. 2, col. 10, lines 6-19 "...executing on general purpose computers...processors or computing platforms... processor..."}

(ii) identify a business event affecting the value of the business process;

(iii) receive a business event information (message) indicating an occurrence of the business event, the business event message including business data describing the business event;

{see Figs. 1, 3, 4, 5, 6, 10B, 11, especially Fig. 19 "**EVENT MANAGING UNIT**", "**MONITORING UNIT**", and Fig. 22, cols. 27-28, col. 32, lines 25-67, col. 33, lines 20-65, col. 34, lines 1-60, and col. 35, lines 1-24}

(iv) in response to receiving the business event message, determine several business process (proposal, quote term, sale, forecast, trend, etc.) or calculate a quote price or proposal based on profitability requirements, to implement/carry out improve business performance based on the business data; and

{see Figs. 4, element 408 "Quote", 410 "Finance", and "412 "Proposal", col. 14, lines 5-67, cols. 27-28, col. 32, lines 45-67, col. 33, lines 18-60, especially col. 34, lines 1-55}

(v) output the result of the determined business process proposed or implemented; and

(b) a contextual visualization in connection with the workflow manager operable to (capable of) display the data (result or value) of the proposed/implemented business process/task.

(see Figs. 11, "Communication equipment", Fig. 13 "Screens & Interface", col. 10, lines 5-50, col. 26, lines 35-50). Alternatively, the screen or interface or terminal as shown above is capable of this feature.

The current function language, "a processor ***operable to***" in claim 9 and "a processor ***cooperative***" in claim 10, is considered as "a processor ***capable of***" which means that the processor does not have to have the exact functions or elements but merely being capable of performing (generating or producing) the functions or elements.

JOHNSON et al fairly teaches the claimed invention except for step (i) receiving a selection of business parameter to monitor, i.e. key performance indicator (KPI), and carrying out steps (b)-(e) using the (KPI).

ORACLE is cited to teach a business monitoring and management application and integrated information source including the use of tracking a business performance parameter such as key performance indicators (KPI) and forecasting business opportunity to improve competitive advantage and enhance business operation with multidimensional analysis by empowering the business managers and executives to easily analyze e-business sales information and marketing data via a standard web browser (see page 1). The software provides global access to real time business monitoring information such as sales, forecasting, marketing trends and internet click-stream data to enhance a company's customer intelligence (see page 1). The steps of

(i)-(v) are merely steps involved in monitoring and reporting a business performance and these are inherently including in the accessing the information, monitoring and analyzing and marketing of data including the tracking of the **key performance indicators** (KPIs) via a standard Web browser as cited in ORACLE above. It would have been obvious to modify the teachings of JOHNSON et al by using other business monitoring parameter, i.e. key performance indicator (KPI), for monitoring a business process with respect to a business event instead of forecasting or trend or analyzing market value as taught by ORACLE as mere using other similar financing parameters to monitor the desired business process to achieve similar business event monitoring result.

Alternatively, the teachings of ORACLE is cited above. ORACLE discloses the step of receiving business information and analyzing e-business sales and marketing data via a standard web browser (see page 1). ORACLE fails to explicitly disclose the step of receiving information indicating an occurrence of a business event, identifying a business event, and determine a business monitoring parameter, such as KPI, based on the received information. This missing feature is taught by JOHNSON et al as cited above. It would have been obvious to modify the teachings of ORACLE by receiving information indicating an occurrence of a business event, identifying a business event, and determine a business monitoring parameter as taught by JOHNSON et al as for an improved system for automatically facilitating a sale opportunity or a new event in the sales process using event manager as shown on Figs. 4, 7, 8 19 or 22, col. 2, lines 20-50.

Similarly, **PEOPLESOFT** is cited to teach a business monitoring and management application and integrated cause-and-effect perspective on key management processes by providing the capabilities necessary to design and monitor critical success factors and calculate KPI to help managers develop and execute organizational strategy (see page 1). The PeopleSoft Balanced scorecard leverages data and metrics from internal and external data sources and provides a focal point for EPM's four business solutions: Strategic & Financial management, Workforce Analytics and Industry Process management, and Customer Relationship management (see page 1). Therefore, it would have been obvious to modify the teachings of JOHNSON et al by using other financing parameter such as a key performance indicator instead of forecasting or analyzing market value as taught by PEOPLESOFT as mere using other similar financing parameters to achieve similar business event monitoring result.

Alternatively, the teachings of PEOPLESOFT is cited above. PEOPLESOFT discloses the step of receiving business data and metrics from internal and external data sources and analyzing the data to provide business solution (see page 1). PEOPLESOFT fails to explicitly disclose the step of receiving information indicating an occurrence of a business event, identifying a business event, and determine a business monitoring parameter, such as KPI, based on the received information. This missing feature is taught by JOHNSON et al as cited above. It would have been obvious to modify the teachings of PEOPLESOFT by receiving information indicating an occurrence of a business event, identifying a business event, and determine a business monitoring parameter as taught by JOHNSON et al as for an improved system for

automatically facilitating a sale opportunity or a new event in the sales process using event manager as shown on Figs. 4, 7, 8 19 or 22, col. 2, lines 20-50.

As for independent apparatus claim 10, which has similar limitations as in independent system claim 9 above, it's rejected for the same reasons set forth above.

As for independent method claim 1, which is merely the method claim to carry out the apparatus claim 10 above, it's rejected over the method of JOHNSON ET AL /ORACLE or PEOPLESOFT, to carry out the system/apparatus of JOHNSON ET AL /JOHNSON ET AL or PEOPLESOFT as cited above. Alternatively, the set up of a method to carry out a respective computed-system claim would have been obvious to a skilled artisan.

As for dep. claims 2-6 (part of 1 above), which deal with the type of business event message or features of the messages with respect to events or data or information, these are non-essential to the scope of the claimed invention and are fairly taught in JOHNSON ET AL Figs. 4-7. Moreover, the limitations are considered as non-functional descriptive material (NFD) on the data of "...", thus having no patentable weight. The mere insertion of "reference event" or "change event" or "competition event" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight.

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of

"data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

As for dep. claim 7 (part of 1 above), which deal with the type of PKI, i.e. prediction (trend or forecast), this is fairly taught in PEOPLESOFT or ORACLE, as described above.

As for dep. claim 13 (part of 1 above), which deal with the type of business event message or features of the messages with respect to events or data or information, this is taught in Fig. 2 which has the "event manager" component (201A) and communications component (118A) and wherein the communications module can generate message about business events and time frame for the events, see col. 2, lines 20-50, Fig. 2, 15A-15C, and 21A-21C. Moreover, the limitations are considered as non-functional descriptive material (NFDM) on the data of "...", thus having no patentable weight. The mere insertion of "reference event" or "change event" or "competition event" data over "data" does not impart functionality when employed as a computer component", thus having no patentable weight.

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of



"data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

**8. Dependent claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over JOHNSON et al /PEOPLESOFT or ORACLE as applied to claims 1-7 above, and further in view of CLINE et al.**

The teachings of JOHNSON et al /PEOPLESOFT or ORACLE as applied to claims 1-7 are cited above.

As for dep. claim 12 (part of 1 above), which deal with requesting additional information about the business event if desired, in another system/method for monitoring process (flight) plan, CLINE et al discloses the general concept of determining whether to request additional information about other event related to the process (flight) plan, requesting the additional information from an information provider; and wherein electronically generate a different process/flight plan or the update of an existing plan based on the requested or updated information/value in order to allow the flight crew (manager) to effectively and continuously monitor the process (aircraft) progress, and, if necessary or desirable, update or change the process performance (flight plan) (see cols. 2-3, 13, 15, lines 1-30, col. 17, line 60 to col.8, line 20, cols. 29-30, and 30-34). It would have been obvious to modify the teachings of JOHNSON et al /ORACLE or PEOPLESOFT to include the steps of determining whether to request

additional information about other event related to the process (flight) plan, requesting the additional information from an information provider; and wherein electronically generate a different process/flight plan or the update of an existing plan based on the requested or updated information/value as taught CLINE et al to allow the flight crew (manager) to effectively and continuously monitor the process (aircraft) progress, and, if necessary or desirable, update or change the process performance (flight plan), as indicated above.

**9. Claims 9, 1-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JOHNSON ET AL in view of ORACLE Article of 9/20/1999, hereinafter as "ORACLE" and BATTA.**

As for claims 9 and 1, In a network management system, BATTAT et al is cited to teach a method for monitoring an object by reporting /displaying information with respect to change of information, message and events related to the object, comprising the steps receiving business event message information indicating an occurrence of the business event and how these events messages affect the monitoring object and wherein the result of change of the events are displayed via a contextual visualization (real world) interface to obtain the benefits of allowing the user to be intuitive as if physically present in a real world environment or high degree of user defined customization or business process overview as indicated as shown on col. 4, line 47 to col. 5, line 51. See also Fig. 3, steps (301), (302), (303), (304), (305), (306), (307), (308), (309), (310), and (311), Fig. 1, Fig. 10j, col. 8, lines 5-67, col. 15, lines 22-40).

It would have been obvious to modify the displaying interface in the monitoring a business performance of JOHNSON ET AL /ORACLE by using a contextual visualization interface as taught by BATTAT et al to obtain the benefits of allowing the user to be intuitive as if physically present in a real world environment or high degree of user defined customization or business process overview as indicated as shown on col. 4, line 47 to col. 5, line 51. See also Fig. 3, steps (301), (302), (303), (304), (305), (306), (307), (308), (309), (310), and (311), Fig. 1, Fig. 10j, col. 8, lines 5-67, col. 15, lines 22-40). Note that BATTAT et al also teaches step (c) of receiving business information including business event message and how this event message affects the status or the result of the monitoring object and therefore it would have also been obvious to modify the teachings of PEOPLESOFT or COGNOS or ORACLE to include business event message as taught by BATTAT et al as mere including other relevant business information.

As for dep. claims 2-6 (part of 1 above), which deal with the type of business event message or features of the messages with respect to events or data or information, these are non-essential to the scope of the claimed invention and are fairly taught in Fig. 3A and 3 element (304) of BATTAT et al.

As for dep. claim 7 (part of 1 above), which deal with the type of PKI, i.e. prediction (trend or forecast), this is fairly taught in COGNOS or PEOPLESOFT or ORACLE, as described above.

As for dep. claim 13 (part of 1 above), which deal with the type of business event message or features of the messages with respect to events or data or information, this

is taught in Fig. 2 which has the "event manager" component (201A) and communications component (118A) and wherein the communications module can generate message about business events and time frame for the events, see col. 2, lines 20-50, Fig. 2, 15A-15C, and 21A-21C. Note that the phrase "for the successor event ...has not occurred", is not a positively recited method step but, rather, is mere intended use of the displayed message and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps.

Moreover, the limitations are considered as non-functional descriptive material (NFD) on the data of "...", thus having no patentable weight. The mere insertion of "reference event" or "change event" or "competition event" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight.

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

**10. Dependent claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over JOHNSON et al /ORACLE/ and BATTA as applied to claims 1-7 above, and further in view of CLINE et al.**

The teachings of JOHNSON et al /ORACLE/BATTA as applied to claims 1-7 are cited above.

As for dep. claim 12 (part of 1 above), which deal with requesting additional information about the business event if desired, in another system/method for monitoring process (flight) plan, CLINE et al discloses the general concept of determining whether to request additional information about other event related to the process (flight) plan, requesting the additional information from an information provider; and wherein electronically generate a different process/flight plan or the update of an existing plan based on the requested or updated information/value in order to allow the flight crew (manager) to effectively and continuously monitor the process (aircraft) progress, and, if necessary or desirable, update or change the process performance (flight plan) (see cols. 2-3, 13, 15, lines 1-30, col. 17, line 60 to col.8, line 20, cols. 29-30, and 30-34). It would have been obvious to modify the teachings of JOHNSON et al /ORACLE/BATTA to include the steps of determining whether to request additional information about other event related to the process (flight) plan, requesting the additional information from an information provider; and wherein electronically generate a different process/flight plan or the update of an existing plan based on the requested or updated information/value as taught CLINE et al to allow the flight crew (manager) to

effectively and continuously monitor the process (aircraft) progress, and, if necessary or desirable, update or change the process performance (flight plan), as indicated above.

As for dep. claim 12 (part of 1 above), which deal with requesting additional information about the business event based on the message, in view of the general teachings of event management and message/information and determination of financial values such as forecasting, analyzing market, reviewing progress, etc., on cols. 19-20, it would have been obvious to do so in order to provide accurate/complete analysis or forecasting or financial results.

#### ***Response to Arguments***

11. Applicant's arguments filed 7/22/09 have been fully considered but they are not persuasive.

1) With respect to the rejection of method claims 1-7, 12-13 (method) under 35 U.S.C. 101, applicant's comments on page 7 as shown below:

"Applicant respectfully traverses this rejection. Applicant respectfully notes that Claim 1 recites "displaying the determined value of the key performance indicator via a contextual visualization interface" (emphasis added). Thus, the method of Claim 1 is "tied to a particular machine." Applicant additionally notes that the Board of Patent Appeals and Interferences recently held that "a computerized method which includes a step of outputting information from a computer...", are tied to a particular machine or apparatus," and therefore contain patentable subject matter. *See Ex Parte Dickerson*, Appeal Number 2009-001172, July 9, 2009, p. 16"

They are not found to be persuasive for 2 reasons:

1) The current claims 17 and 12-13, do not contain subjects underlined above, i.e. "a computerized method" and "outputting information from a computer..", so applicant's argument is moot because the argued subject matters are not in the claim.

2) As for the term "via a contextual visualization interface", as shown under the issue of "**Finding of Facts**", there is nothing in this definitions saying that this term "interface" requires or "is tied to a particular machine", as indicated above.

2) With respect to the rejection of method claims 1-7, 12-13 (method) and 9-10 (system) under 35 U.S.C. 103, applicant's comments on pages 9-16 are not found to be persuasive for the following reasons:

1) As for the limitation of "receiving information identifying a selected key performance indicator to monitor", this is inherently included in the teachings of JOHNSON ET AL /ORACLE /PEOPLESOFT as indicated above. Moreover, as shown above, terms such as "key performance indicator" (KPI), in the first step/element "*receiving **information** identifying a selected KPI to monitor*" or "business event", they are considered as non-functional descriptive material (NFDM) on the data of "..." and is merely "information" or "data", thus having no patentable weight. The mere insertion of "stock price" or "price/unit" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight. Note that the last step is merely "displaying of the data or information", wherein the data or information is about the determined KPI, so this indicates that this is merely data

processing system or communication system. There are no steps calling for "using the KPI value" and "shutting the plant" or "selling a stock of the business".

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

2) As for the limitation of "identifying at least one business event associated with the selected key performance indicator", this is inherently included in the teachings of JOHNSON ET AL /ORACLE /PEOPLESOFT as indicated above. Moreover, as shown above, terms such as "key performance indicator" (KPI), in the first step/element "receiving **information** identifying a selected KPI to monitor" or "business event", they are considered as non-functional descriptive material (NFDM) on the data of "..." and is merely "information" or "data", thus having no patentable weight. The mere insertion of "stock price" or "price/unit" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight. Note that the last step is merely "displaying of the data or information", wherein the data or information is about the determined KPI, so this indicates that this is merely data



processing system or communication system. There are no steps calling for "using the KPI value" and "shutting the plant" or "selling a stock of the business".

3) As for the arguments with respect to the limitations of claim 12 on pages 13-15, they are inherently included in the teachings of JOHNSON ET AL /ORACLE / CLINE as indicated above. Moreover, as shown above, terms such as "key performance indicator" (KPI), in the first step/element "*receiving **information** identifying a selected KPI to monitor*" or "business event", "**content of the message**", they are considered as non-functional descriptive material (NFDM) on the data of "...". and is merely "information" or "data", thus having no patentable weight. The mere insertion of "stock price" or "price/unit" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight. Note that the last step is merely "displaying of the data or information", wherein the data or information is about the determined KPI, so this indicates that this is merely data processing system or communication system. There are no steps calling for "using the KPI value" and "shutting the plant" or "selling a stock of the business".

4) As for the arguments with respect to the limitations of claim 13 on pages 15-16, they are inherently included in the teachings of JOHNSON ET AL /ORACLE / BATTAT as indicated above. Note that the phrase "for the successor event ...has not occurred", is not a positively recited method step but, rather, is mere intended use of the displayed message and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps.

Moreover, as shown above, terms such as "key performance indicator" (KPI), in the first step/element "*receiving **information** identifying a selected KPI to monitor*" or "business event", "**content of the message**", they are considered as non-functional descriptive material (NFDM) on the data of "... " and is merely "information" or "data", thus having no patentable weight. The mere insertion of "stock price" or "price/unit" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight. Note that the last step is merely "displaying of the data or information", wherein the data or information is about the determined KPI, so this indicates that this is merely data processing system or communication system. There are no steps calling for "using the KPI value" and "shutting the plant" or "selling a stock of the business".

4) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

PEOPLESOFT is cited to teach a business monitoring and management application and integrated cause-and-effect perspective on key management processes by providing the capabilities necessary to design and monitor critical success factors and calculate KPI to help managers develop and execute organizational strategy (see page 1). The PeopleSoft Balanced scorecard leverages data and metrics from internal and external data sources and provides a focal point for EPM's four business solutions: Strategic & Financial management, Workforce Analytics and Industry Process management, and Customer Relationship management (see page 1). It would have been obvious to modify the teachings of BATTAT et al to further include KPI application as taught by PEOPLESOFT for at least one of the many benefits cited above, i.e. KPI to help managers develop and execute EPM's four business solutions: Strategic & Financial management, Workforce Analytics and Industry Process management, and Customer Relationship management. As for the limitation of the monitoring information includes business event message, this limitation appears to be included in the above teachings since business event message reads over business information or business data. Therefore, PEOPLESOFT fairly teaches the claimed invention except for the use of a contextual visualization interface in the "displaying" step.

COGNOS is cited to teach allows organizations to deliver business intelligence **applications** across the enterprise based on a shared dimensional framework. From the building of subject area data marts, to the automatic design and deployment of

business models and reports, DecisionStream is the foundation for end-to-end BI. Its integration with PowerPlay, Impromptu, and Cognos Visualizer allows users to identify and analyze trends and **key performance indicators** and drill through to relational data reports for transaction-level details. The result is that all users have access to consistent data for more informed and coordinated analysis, reporting, and decision-making across and outside the enterprise. As for the limitation of the monitoring information includes business event message, this limitation appears to be included in the above teachings since business event message reads over business information or business data. Therefore, COGNOS fairly teaches the claimed invention except for the usage of a contextual visualization interface in the "displaying" step.

No claims are allowed.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689